IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Appellee,

v.

LORENZO LUCIANO ALVAREZ,
Appellant.

No. 2 CA-CR 2018-0318
Filed October 2, 2019

THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
NOT FOR PUBLICATION
See Ariz. R. Sup. Ct. 111(c)(1); Ariz. R. Crim. P. 31.19(e).

Appeal from the Superior Court in Pima County
No. CR20174729001
The Honorable Christopher Browning, Judge

AFFIRMED

COUNSEL

Mark Brnovich, Arizona Attorney General
Joseph T. Maziarz, Chief Counsel
By Michelle L. Hogan, Assistant Attorney General, Phoenix
Counsel for Appellee

Emily Danies, Tucson
Counsel for Appellant

MEMORANDUM DECISION

Chief Judge Vásquez authored the decision of the Court, in which Presiding Judge Staring and Judge Brearcliffe concurred.

V Á S Q U E Z, Chief Judge:

¶1 After a jury trial, appellant Lorenzo Alvarez was convicted of two counts of aggravated domestic violence, and was sentenced to concurrent, five-year terms of imprisonment. On appeal, Alvarez argues the trial court improperly sentenced him as a category-three repetitive offender in the absence of an express finding that he had committed two or more historical prior felony convictions. *See* A.R.S. § 13-703(C), (J). We affirm.

¶2 We limit our discussion to the facts relevant to Alvarez's claim of sentencing error. The offenses that gave rise to these domestic-violence convictions were committed in September and October of 2017. To prove the offenses of aggravated domestic violence, the state was required to show Alvarez "within a period of eighty-four months commit[ted] a third or subsequent violation of a domestic[-]violence offense or [has been] convicted of a violation of a domestic[-]violence offense and ha[d] previously been convicted of any combination of convictions of a domestic[-]violence offense." A.R.S. § 13-3601.02(A).

¶3 At trial, the state introduced into evidence certified copies of indictments, sentencing minute entries, and disposition reports evincing Alvarez's convictions in Pima County Cause No. CR20130630001, for a felony domestic-violence offense committed on February 1, 2013, and in Pima County Cause No. CR20140314002, for a felony domestic-violence offense committed on January 8, 2014. These certified records were admitted, without objection, "for purposes of the record" only. Redacted versions of "the same records" were also admitted, also without objection, "for purposes of going back to the jury." The redacted exhibits showed the offense and conviction date for the prior offenses and their identification as "domestic[-]violence" offenses, but they did not include detailed

information regarding their designation as felonies.[1] To further authenticate this evidence, the state called the Tucson Police Department detective who had responded to the October 2017 incident; the detective testified that when asked, Alvarez had "acknowledge[d] that he did have . . . two [prior domestic-violence] convictions."

¶4 The jury's guilty verdicts demonstrated their determinations, beyond a reasonable doubt, that Alvarez had been convicted of domestic-violence offenses on January 24, 2014, in CR20130630001, and on October 10, 2014, in CR20140314002. After the verdicts were returned, the state told the trial court there was no need to proceed with a priors trial to explore "additional priors." Additionally, the presentence report informed the court that Alvarez should be sentenced as a category-three repetitive offender and stated the jury had determined that two historical prior felony convictions in CR20130630001 and CR20140314002 "were proven beyond a reasonable doubt."[2]

¶5 On appeal, Alvarez maintains he should be resentenced because the trial court failed to make "any formal determination" that he had two or more historical prior convictions, he did not so admit at trial, and the state failed to prove the historical prior convictions existed. He points out that although the jury found he had two prior domestic-violence convictions, the verdict forms did not state they were felony convictions. To the extent Alvarez argues he should not have been sentenced as a category-three offender because the state failed to prove his prior felony convictions, he concedes he did not object on this ground below. He correctly argues that an illegal sentence constitutes fundamental error, *see State v. McPherson*, 228 Ariz. 557, ¶ 4 (App. 2012), and asserts that, because he did not object to the sentences below, he must demonstrate prejudice to be entitled to relief, *State v. Henderson*, 210 Ariz. 561, ¶ 20 (2005) ("To prevail under [fundamental error] review, a defendant must establish both that

[1]Although the redacted disposition reports indicated "F" for the "Offense Type," they did not expressly state that Alvarez had been convicted of felony offenses.

[2]Although the presentence report referred to the jury having found "two" historical prior felony convictions, it erroneously listed a third drug-related, non-domestic violence prior conviction upon which the jury did not make a finding, but which the evidence presented at trial and the record nonetheless support, and which the trial court relied upon at sentencing.

fundamental error exists and that the error in his case caused him prejudice."). Alvarez further contends that he was prejudiced by receiving five-year prison terms as a category-three offender rather than the lesser terms he would have received under § 13-703(A).

¶6 However, as previously noted, there was ample evidence establishing that Alvarez had three prior felony convictions, which included testimony that he had acknowledged the existence of two of those convictions to a detective. Moreover, Alvarez did not object at trial to the admission of the evidence, nor did he object to any portion of the presentence report, which also referred to the three historical prior felony convictions. And, in his sentencing memorandum, Alvarez himself referred to two of his prior felony convictions. He also did not object at sentencing to his designation as a category-three repetitive offender or to the trial court's imposition of the corresponding, presumptive five-year prison terms for his class five felonies. *See* § 13-703(J). To the contrary, at the sentencing hearing, Alvarez referred to his "priors" and asked the court to impose a "3[-]year sentence," which is, in fact, the shortest prison term available for a category-three repetitive offender convicted of a class five felony. *See id.*

¶7 Based on the abundant, unchallenged evidence establishing that Alvarez had two or more historical prior felony convictions, he has not shown that any error occurred, nor has he meaningfully demonstrated how he was prejudiced by the purported error. *Cf. State v. Morales*, 215 Ariz. 59, ¶ 13 (2007) (in context of defendant's admission of or stipulation to prior convictions, where "evidence conclusively proving [defendant's] prior convictions is already in the record," defendant cannot show prejudice even if complete colloquy under Rule 17.6, Ariz. R. Crim. P., not given).

¶8 Additionally, to the extent Alvarez asserts the trial court erred by failing to make a formal determination that he had two historical prior felony convictions, he has not provided any support for this proposition, much less established that fundamental error occurred. He has, therefore, waived this argument for failure to develop it. *See State v. Sanchez*, 200 Ariz. 163, ¶ 8 (App. 2001) (failure to develop argument as required by criminal rules waives argument); *see also* Ariz. R. Crim. P. 31.10(a)(7) (opening brief must contain "appellant's contentions with supporting reasons" and "citations of legal authorities").

¶9 Accordingly, we affirm Alvarez's convictions and sentences.